



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE  
DIRECTOR

November 20, 1991  
AO-91-26

A. Joseph DeNucci  
Auditor of the Commonwealth  
State House  
Boston, MA 02133

Re: Payment of Legal Costs  
Ethics Commission Investigation

Dear Mr. DeNucci:

This letter is in response to your August 22, 1991, letter requesting an advisory opinion regarding the propriety of your political committee paying for certain legal expenses incurred since January 1, 1991.

You have stated that shortly after the 1990 election a situation developed which has had a substantial impact on your standing before the public and which may be an issue in your 1994 reelection campaign. The situation that you refer to began when an article attributable to anonymous sources appeared in The Boston Globe suggesting that you had lobbied then Treasurer Robert Crane to secure a job at the State Lottery for your son-in-law. Subsequently, the situation magnified into serious questions of whether you had breached your duties. This was followed by an editorial questioning your integrity and partisan attacks by a Republican leader.

You have further stated that on December 20, 1991, Common Cause of Massachusetts wrote the State Ethics Commission requesting that they investigate the charges set forth in the original newspaper story. In January of 1991 you received a formal notice from the State Ethics Commission regarding the initiation of a preliminary investigation of this matter. You then consulted with members of your political committee and decided to hire legal counsel given the political nature of the partisan charges and the impact of the investigation on future campaigns. Since that time, you have met regularly with counsel to discuss various aspects of the case including case management, dissemination of information and the like. At no time did your discussions with counsel involve the actual conduct of your official duties.

In your opinion, regardless of the eventual outcome of the charges and the Ethics Commission investigation, you anticipate that this matter will be a likely issue in the 1994 election. You ask if it would be appropriate to allocate to your committee the liability of all of the expenses of your legal counsel, up to and including the completion of the Ethics Commission proceedings and all ancillary matters related thereto.

For the reasons set forth below, it is the opinion of the Office that the payment of the legal expense which you have described may be paid by your political committee consistent with M.G.L. c.55.

M.G.L. c.55, s.6 provides, in pertinent part, that:

A political committee organized or operating on behalf of a candidate for the office of . . . auditor may receive, pay and expend money or other things of value for reasonable and necessary expenses directly related to the campaign of such candidate but shall not make any expenditure that is primarily for the candidate's or any other person's personal use.<sup>1</sup>  
(Emphasis added)

The regulations promulgated pursuant to M.G.L. c.55 prohibit the payment of expenses relative to civil suits or administrative proceedings with certain exceptions. Specifically, 970 CMR 2.05(4)(a)(3)(c) permits "expenses relative to necessary legal action to protect or further the interests of the political committee."<sup>2</sup>

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1. The term "personal use" as employed in the context of M.G.L. c.55, s.6 and the regulations is a term of art which includes any non-political use such as business, governmental, legislative, family and social. See AO-91-06.

2. This Office has previously concluded that a non-constitutional candidate's political committee could pay for legal expenses in connection with an Ethics Commission investigation. See AO-91-08. Although the pertinent language from M.G.L. c.55, s.6 in that case is different, the regulatory language is the same. In addition, although section 6 provides that political committees of constitutional candidates may make expenditures only "for reasonable and necessary expenses directly related to the campaign of such candidate" while all other political committees may expend money for "the enhancement of the political future of the candidate," both phrases must be read in connection with the definition of "expenditure." M.G.L. c.55, s.1 defines expenditure in part as any "expenditure . . . for the purpose of influencing the nomination or election of said . . . candidate. . . ." Therefore, the standards for expenditures are not significantly different for the purpose of this opinion.

Regardless of the level of an elected officials's office, such officials may be, in certain respects, involved in a campaign for reelection from the moment the official steps into office. Indeed, the campaign finance law defines candidate in part as an "individual [who] holds elective public office . . . and . . . has . . . received any money or anything of value . . ." An elected officer attends a variety of political functions and fundraising events, takes certain actions in the public eye to promote himself and is, of course, often called upon to balance his oath of office and official responsibilities with his goal of winning reelection.

As this Office stated in AO-91-08:

Like a defamation action, a Commission investigation raises questions regarding the candidate's reputation and respect in the community, matters which this Office has previously concluded are "central to the issue of one's political future" (See AO-85-16). Therefore, a Commission investigation is inextricably linked as a means to protect or further the interests of the political committee.<sup>3</sup>

Of course, a political committee cannot predict what issues will be critical in a campaign that is three or four years away. However, it has the right to take action and make expenditures regarding civil and administrative matters which are reasonably necessary to protect or further its interests. Under the circumstances outlined above, it is not unreasonable to conclude that allegations which have already been the subject of partisan attacks could become campaign issues in the candidate's campaign for reelection three or four years away. Therefore, the legal costs associated with the Ethics Commission investigation could reasonably be viewed as expenditures to protect or further the political committee's interests or, as required by s.6, "reasonable and necessary expenses directly related to [your] campaign."<sup>4</sup>

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3. Such a connection is much less likely to exist in other types of civil suits or administrative hearings such as a civil action for breach of contract relative to the purchase of the candidate's residence, an action in tort for negligence arising out of an automobile accident or an IRS investigation. While any publicity from such actions may, of course, affect the candidate's future, the actions are intrinsically personal. They are also actions that any private citizen might face.

4. M.G.L. c.55, s.6 recognizes the fact that certain political expenditures may provide benefits which are political as well as personal. Therefore, the law does not require what would be an almost impossible standard to achieve, i.e. that the purpose of all political committee expenditures be "exclusively" political. Rather the law requires that the primary purpose of such expenditures be political and not personal as that term is used in the statute.

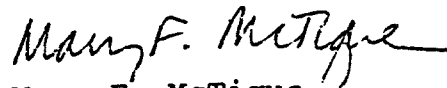
You should note that the payment of a fine, if any, incurred as a result of the Ethics Commission proceeding would not be a permissible expenditure by your political committee. While the committee has an interest in defending a candidate's good name, it has no interest in paying the candidate's fines (See AO-82-24). Also, please note that this opinion is limited to expenses for an administrative proceeding before the Commission and does not address expenses for criminal prosecution under the Conflict of Interest law, M.G.L. c. 268A.

For the reasons set forth above, it is the opinion of this Office that expenditures by your political committee to reimburse you for legal expenses for a State Ethics Commission investigation arising from a combination of public allegations, newspaper stories and allegedly partisan attacks would be permitted under section 6 of M.G.L. c.55 and the pertinent regulations provided, as you state, that such legal expenses did not involve the actual conduct of your official duties.

This opinion is based solely on the representations made in your letter and has been rendered solely in the context of M.G.L. c.55.

Please do not hesitate to contact the Office if you have any additional questions.

Very truly yours,

  
Mary F. McTigue  
Director

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